

# State of Colorado



Bill Ritter, Jr.  
Governor

Rich Djokic  
Board Chair

Kristin F. Rozansky  
Board Director

State Personnel Board  
633 17<sup>th</sup> Street, Suite 1320  
Denver, Colorado 80202-3604  
Phone (303) 866-3300  
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## AGENDA PUBLIC BOARD MEETING June 17, 2008

A public meeting of the State Personnel Board will be held on Tuesday, June 17, 2008, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by June 12, 2008.

**I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])**

**II. REQUESTS FOR RESIDENCY WAIVERS**

June 1, 2008 Report on Residency Waivers

**III. PENDING MATTERS**

**A. Retention Area Requests.**

1. Department of Higher Education request to limit retention areas.

**IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD**

There are no Initial Decisions or Other Final Orders of the Administrative Law Judges on appeal to the Board this month.

**V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING**

**A. Nadine Roberts-Cornish v. Department of Public Health and Environment, Disease Control & Environmental Epidemiology, State Personnel Board case number 2008G060.**

Complainant, a General Professional II at the Colorado Department of Public Health and Environment, appeals Respondent's termination of Complainant's employment during the probationary period, alleging discrimination based on race/color and retaliation for complaining of racial discrimination. Complainant requests reinstatement, back pay, and to be made whole for losses suffered due to her termination.

Respondent states that the Board's jurisdiction is limited to considering Complainant's claims of unlawful discrimination under the Colorado Anti-Discrimination Act; Complainant cannot establish that she was terminated because of her race or retaliation; Complainant was terminated because of her unsatisfactory performance; and Complainant has not alleged that she opposed any discriminatory or unfair employment practice.

On June 4, 2008, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge, recommending a hearing be granted on the issues of unlawful discrimination on the basis of race or color and unlawful retaliation.

B. Joshua Davis v. Department of Corrections, Division of Adult Parole and Community Corrections, State Personnel Board case number 2008G061.

Complainant, a probationary employee at the Department of Corrections (DOC or Respondent), filed a petition for hearing on March 5, 2008. Complainant asserts that his termination was imposed without due process, in violation of his liberty interest in his reputation.

Respondent argues that Complainant has failed to meet his burden of showing that grounds exist to merit a hearing.

On June 4, 2008, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge, recommending a hearing be granted on the issue of: challenging the factual basis for his termination, for the purpose of clearing his name.

**VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

A. Barbara Pridemore v. Department of Public Health and Environment, State Personnel Board case number 2007G073 (May 20, 2008).

Complainant, a surveyor who conducts reviews of long-term care facilities, appealed the denial of her grievance over the imposition of a corrective action issued to her on the basis of complaints filed by facilities she had surveyed as part of her duties, seeking removal of the corrective action, reinstatement to Team Coordinator duties, attorney fees and costs, and such other relief as warranted. Respondent argued at hearing that the appeal should be dismissed because the appeal concerned Respondent's application of Board Rule 8-3 rather than Board Rule 8-8 and, therefore, did not meet the limitations on Board jurisdiction under C.R.S., Section 24-50-123(3). The ALJ found that the grievance procedures adopted by the Board included both the procedures under Board Rule 8-8 for internal complaints and the procedures under Board Rule 8-3 for external complaints, and that the Board therefore had jurisdiction to hear the appeal under C.R.S., Section 24-50-123(3), as well as under Colo. Const. Art. XII, Section 13(8). After hearing, the ALJ determined that Respondent had failed to include an interview with Complainant as part of the investigation and had not permitted Complainant to explain her version of events prior to making the decision to issue Complainant a corrective action. The ALJ found that this procedure was contrary to Board Rule 8-3 as an action which did not constitute an appropriate way to conduct an investigation of an employee's conduct. The ALJ also found that the failure to interview Complainant prior to deciding to impose a corrective action constituted an arbitrary and capricious action because the investigation failed to use reasonable diligence and care to procure the evidence that the agency was authorized to consider. Finally, the ALJ found that the Board's authority to remedy an action by an appointing authority which was arbitrary, capricious or contrary to rule or law should equal, to the extent practicable, the wrong actually sustained by Complainant and which would restore Complainant to the position she would have been in, had the

investigation not occurred. Rescinding the corrective action, the ALJ declined to award attorney fees and costs.

- B. Douglass Harris v. Department of Human Services, State Personnel Board case number 2008B050 (May 23, 2008).

Complainant, a correctional youth security officer, appealed his demotion from Client Manager to Correctional Youth Security Officer I, seeking a return to his former position or a return to his former pay rate. After hearing, the ALJ concluded that Complainant committed the acts for which he was disciplined, including providing blank forms to be signed to parolees with whom he was to have face-to-face meetings, submitting false reports to his supervisor and into the TRAILS computer system concerning such meetings, and failing to meet his contact requirements with parolees due to the fact that he was working a second job. The ALJ also found that Respondent's decision to discipline Complainant was not arbitrary, capricious or contrary to rule or law because the appointing authority conducted a reasonable investigation and reached reasonable conclusions that Complainant's conduct violated a variety of performance and ethics standards. Finally, the ALJ determined that the discipline imposed was within the range of reasonable alternatives, considering that face-to-face contact with parolees is a core requirement for a Client Manager, Complainant had planned how to "fool the system" by having parolees sign blank forms, Complainant involved parolees in his plan to evade his reporting requirements, and the problem extended over an extended period of time. Affirming the disciplinary demotion, the ALJ dismissed Complainant's appeal with prejudice.

No Designation of Record or Notice of Appeal has been filed.

**VII. REVIEW OF THE MINUTES FROM THE MAY 20, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VIII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MAY 20, 2008 PUBLIC MEETING:**

- A. Petition for Declaratory Order of Laura Taylor v. Department of Public Health and Environment, State Personnel Board case number 2008D001.

The Board remanded this case to an Administrative Law Judge to set the matter for hearing, with an order that the parties in interest, including Petitioner, the Department of Public Health and Environment, the Colorado Public Employees' Retirement Association and the Attorney General, be noticed that the matter is set for hearing.

- B. Norma Smith v. Department of Human Services, Division of Disability Determination, State Personnel Board case number 2007B090.

The Board granted the Motion to Dismiss, contained in Respondent's Motion to Dismiss and in the Alternative, Answer Brief; made it an Order of the Board; and dismissed the matter with prejudice.

**IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA**

**X. ADMINISTRATIVE MATTERS & COMMENTS**

**A. ADMINISTRATIVE MATTERS**

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS,  
PERSONNEL ADMINISTRATORS, AND THE PUBLIC

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the May 20, 2008 Executive Session
- C. Other Business

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**NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

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| <b>July 15, 2008</b>      | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>August 19, 2008</b>    | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>September 16, 2008</b> | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>October 21, 2008</b>   | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>November 18, 2008</b>  | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>December 16, 2008</b>  | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>January 20, 2009</b>   | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>February 17, 2009</b>  | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>March 17, 2009</b>     | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>April 21, 2009</b>     | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>May 19, 2009</b>       | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>June 16, 2009</b>      | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |